

complete probation, service is creditable as determined by agency policy.

(e) Temporary service in a supervisory or managerial position under temporary appointment, promotion, or reassignment *prior to probation* is creditable as determined by agency policy. Prior service under a detail may be credited only when a detail to a supervisory or managerial position is made permanent without a break in service.

[44 FR 44811, July 31, 1979, as amended at 60 FR 53505, Oct. 16, 1995]

§ 315.907 Failure to complete the probationary period.

(a) Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position. An employee who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned, except as provided in paragraph (b) of this section, to a position in the agency of no lower grade and pay than the one the employee left to accept the supervisory or managerial position.

(b) A nonsupervisory or nonmanagerial employee who is demoted into a position in which probation under § 315.904 is required and who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned to a position at the same grade and pay as the position in which he or she was serving probation. The employee is eligible for repromotion in accordance with agency promotion policy.

(c) The agency must notify the employee in writing that he or she is being assigned in accordance with this section.

[49 FR 39287, Oct. 5, 1984, as amended at 60 FR 53505, Oct. 16, 1995]

§ 315.908 Appeals.

(a) An employee who, in accordance with the provisions of this subpart, is assigned to a nonmanagerial or non-

supervisory position, has no appeal right.

(b) An employee who alleges that an agency action under this subpart was based on partisan political affiliation or marital status, may appeal to the Merit Systems Protection Board.

§ 315.909 Relationship to other actions.

(a) If an employee is required to concurrently serve both a probationary period under this subpart and a probationary period under subpart H of this part, the latter takes precedence and completion of the probationary period for competitive appointment and fulfills the requirements of this subpart.

(b) An action which demotes an employee to a lower grade than the one the employee left to accept the supervisory or managerial position, and an action against an employee for reasons other than supervisory or managerial performance, is governed by part 432 or part 752 procedures, whichever is applicable. If the employee believes an action under this subpart was based on improper discrimination or other prohibited practices under 5 U.S.C. 2302, he or she may appeal to the Merit Systems Protection Board or the Equal Employment Opportunity Commission, as appropriate.

PART 316—TEMPORARY AND TERM EMPLOYMENT

Subparts A–B [Reserved]

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316.703 Effect on tenure of position change of status quo employees.

Subpart H [Reserved]

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

SOURCE: 33 FR 12423, Sept. 4, 1968, unless otherwise noted.

Subparts A–B [Reserved]

Subpart C—Term Employment

EDITORIAL NOTE: Nomenclature changes to subpart C of part 316 appear at 70 FR 72067, Dec. 1, 2005.

§ 316.301 Purpose and duration.

(a) An agency may make a term appointment for a period of more than 1 year but not more than 4 years to positions where the need for an employee's services is not permanent. Reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization. Agencies may extend appointments made for more than 1 year but less than 4 years up to the 4-year limit in increments determined by the agency. The vacancy announcement should state that the agency has the option of extending a term appointment up to the 4-year limit.

(b) OPM may authorize exceptions beyond the 4-year limit when the extension is clearly justified and is consistent with applicable statutory provisions. Requests to make and/or extend appointments beyond the 4-year limit

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must be initiated by the employing office and sent to the appropriate OPM service center.

[63 FR 63783, Nov. 17, 1998]

§ 316.302 Selection of term employees.

(a) *Competitive term appointment.* An agency may make a term appointment under part 332 of this chapter, by using competitive procedures, or under part 337 of this chapter, by using direct-hire procedures, as appropriate.

(b) *Noncompetitive term appointment.* An agency may give a noncompetitive term appointment, without regard to the requirements of parts 332 and 333 of this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401 of this chapter;

(2) Veterans recruitment appointment (VRA) under § 307.103 of this chapter. Term appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are competitive service appointments not excepted VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30 percent or more). The disability must be documented by a notice of retirement or discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated 1991 or later;

(5) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) Reappointment on the basis of having left a term appointment prior to serving the 4-year maximum amount of time allowed under the appointment. Reappointment must be to a position

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in the same agency appropriate for filling under term appointment and for which the individual qualifies. Combined service under the original term appointment and reappointment must not exceed the 4-year limit; or

(8) Conversion in the same agency from a current temporary appointment when the employee is or was within reach on a certificate of eligibles for term appointment *at any time during service in the temporary position*. *Within reach* means that the person could have been selected for the position under competitive hiring procedures, including veterans' preference. The certificate must have been actually used for term appointment. The person must have been continuously employed in the position from the date found within reach to the date converted to a term appointment.

(c) Term employees are eligible for an extension of their appointment in accordance with the time limits in § 316.301 even if their eligibility for non-competitive appointment expires or is lost during the period they are serving under term employment.

[63 FR 63783, Nov. 17, 1998, as amended at 68 FR 35268, June 13, 2003; 69 FR 33275, June 15, 2004; 73 FR 60611, Oct. 14, 2008; 74 FR 40477, Aug. 12, 2009]

§ 316.303 Tenure of term employees.

(a) A term employee does not acquire a competitive status on the basis of his term appointment.

(b) The employment of a term employee ends automatically on the expiration of his term appointment unless he has been separated earlier in accordance with this chapter.

§ 316.304 Trial period.

(a) The first year of service of a term employee is a trial period regardless of the method of appointment. Prior Federal civilian service is credited toward completion of the required trial period in the same manner as prescribed by § 315.802 of this chapter.

(b) The agency may terminate a term employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

[33 FR 12423, Sept. 4, 1968, as amended at 63 FR 63783, Nov. 17, 1998]

Subpart D—Temporary Limited Employment

EDITORIAL NOTE: Nomenclature changes to subpart D of part 316 appear at 70 FR 72067, Dec. 1, 2005.

§ 316.401 Purpose and duration.

(a) *Appropriate use*. An agency may make a temporary limited appointment—

(1) To fill a short-term position (*i.e.*, one that is not expected to last longer than 1 year);

(2) To meet an employment need that is scheduled to be terminated within the timeframe set out in paragraph (c) of this section for such reasons as abolishment, reorganization, or contracting of the function, anticipated reduction in funding, or completion of a specific project or peak workload; or

(3) To fill positions on a temporary basis when the positions are expected to be needed for placement of permanent employees who would otherwise be displaced from other parts of the organization.

(b) *Certification of appropriate use*. The supervisor of each position filled by temporary appointment must certify that the employment need is truly temporary and that the proposed appointment meets the regulatory time limits. This certification may constitute appropriate documentation of compliance with the limits set out in paragraph (c) of this section. The reason(s) for making a temporary limited appointment must be stated on the form documenting each such appointment.

(c) *Time limits—general*. (1) An agency may make a temporary appointment for a specified period not to exceed 1 year. The appointment may be extended up to a maximum of 1 additional year (24 months of total service). Appointment to a successor position (*i.e.*, to a position that replaces and absorbs the position to which an individual was originally appointed) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties and in the same major subdivision of the agency and same local commuting area as the original appointment is

also considered to be an extension of the original appointment.

(2) An agency may not fill a position by temporary appointment if that position has previously been filled by temporary appointment(s) for an aggregate of 2 years, or 24 months, within the preceding 3-year period.

(d) *Exceptions to general time limits.* (1) Agencies may make and extend temporary appointments to positions involving intermittent or seasonal work without regard to the requirements in paragraph (c) of this section, *provided that*:

(i) Appointments and extensions are made in increments of 1 year or less.

(ii) Employment in the same or a successor position under this and any other appointing authority totals less than 6 months (1,040 hours), excluding overtime, in a service year. The service year is the calendar year that begins on the date of the employee's initial appointment in the agency. Should employment in a position filled under this exception total 6 months or more in any service year, the provisions of paragraph (c) of this section will apply to subsequent extension or reappointment unless OPM approves continued exception under this section. An individual may be employed for training for up to 120 days following initial appointment and up to 2 weeks a year thereafter without regard to the service year limitation.

(2) OPM will authorize exceptions to the limits set out in paragraph (c) of this section only when necessitated by major reorganizations or base closings or other unusual circumstances. Requests based on major reorganization, base closing, restructuring, or other unusual circumstances that apply agencywide must be made by an official at the headquarters level of the Department or agency. Requests involving extension of appointments to a specific position or project based on other unusual circumstances may be submitted by the employing office to the appropriate OPM service center.

[59 FR 46898, Sept. 13, 1994]

§ 316.402 Procedures for making temporary appointments.

(a) *Competitive temporary appointments.* In accordance with the time limits

in § 316.401, an agency may make a temporary appointment under part 332 of this chapter, by using competitive procedures, or under part 337 of this chapter, by using direct-hire procedures, as appropriate.

(b) *Noncompetitive temporary appointments.* In accordance with the time limits in § 316.401, an agency may give a noncompetitive temporary appointment, without regard to the requirements of parts 332 and 333 of this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401 of this chapter;

(2) Veterans recruitment appointment under § 307.103 of this chapter. Temporary limited appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are not VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, 315.703, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30 percent or more). The disability must be documented by a notice of retirement or discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated 1991 or later;

(5) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) Reappointment on the basis of being a former temporary employee of the agency who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter. An agency may not reappoint a former temporary employee if the individual has already served the maximum time allowed in § 316.401 or if the position has been filled under temporary appointment for the maximum

time allowed in §316.401. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements;

(8) Reappointment on the basis of being a former temporary employee who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter and who sustained a compensable injury while serving on the temporary appointment. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements. If the compensable injury disqualifies the former individual from performing such a position, reappointment may be to any position for which the individual is qualified. Reappointment must be for a minimum of 120 days.

(c) *Extension of temporary appointments.* An individual who receives a valid temporary appointment will be eligible for an extension in accordance with §316.401 even if his or her eligibility for noncompetitive appointment expires or is lost during the authorized period of temporary employment.

[63 FR 63784, Nov. 17, 1998, as amended at 68 FR 35268, June 13, 2003; 69 FR 33275, June 15, 2004; 73 FR 60611, Oct. 14, 2008; 74 FR 40477, Aug. 12, 2009]

§316.403 Designation of provisional appointments.

(a) *Conditions for designation.* An agency may designate a temporary appointment as a provisional appointment only when all of the following conditions are met:

(1) The appointment is made to fill a continuing position by a provisional appointment leading to permanent appointment when the position must be filled more quickly than would be possible under the procedures required for nontemporary appointment or when such a provisional appointment is a requirement of the applicable authority;

(2) The agency must have current budgetary and appointing authority for the nontemporary appointment (assuming satisfactory completion of the required procedures); and

(3) The agency must have a specific intention to convert the appointee to a

nontemporary appointment under appropriate authority before the expiration of the temporary appointment, must state this intention in any written offer of employment and document this intention as part of the permanent record of the initial appointment in accordance with instructions issued by OPM.

(b) *Authority for provisional appointments.* Provisional appointments must be made under an authority established by law, Executive order, or regulation or granted by OPM. Appointments which may be treated as provisional appointments under this paragraph may be made under any appropriate authority, including, but not limited to:

(1) Noncompetitive temporary appointments of disabled veterans under §316.402(b)(5), when the appointments are intended to afford eligibility for conversion in accordance with §315.707 of this chapter and section 3112 of title 5, United States Code;

(2) Temporary appointments of nurses in the Department of Veterans Affairs, when the appointments are made under the provisions of section 4114 of title 38, United States Code, with the intention of converting the appointees to continuing appointments as soon as the appointees obtain required State certification or registration and/or the agency completes necessary verification of references;

(3) Temporary transitional Schedule C appointments made under §213.3302 of this chapter, when the appointees are to be converted to nontemporary Schedule C appointments upon OPM approval and completion of necessary clearances.

(4) Senior Executive Service limited term and limited emergency appointments made under §317.601 of this chapter, when the appointees are to be converted to nontemporary appointments in the Senior Executive Service or to nontemporary Presidential appointments, upon further action, such as OPM approval, White House clearance, and/or confirmation by the Senate; and

(5) Temporary appointments of severely physically handicapped individuals, when such appointments are required to demonstrate qualifications for nontemporary appointment under

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§ 213.3102(u) of this chapter, and when the appointees will be converted to such nontemporary appointment upon successful performance in the trial position.

[56 FR 10142, Mar. 11, 1991, as amended at 60 FR 35120, July 6, 1995; 63 FR 63784, Nov. 17, 1998; 66 FR 66710, Dec. 27, 2001]

Subpart E [Reserved]

Subpart F—Appointment Without Competitive Examination in Rare Cases

§ 316.601 Appointment without competitive examination in rare cases.

(a) An agency may make an appointment without competitive examination when:

(1) The duties and compensation of the position are such, or qualified persons are so rare, that in the interest of good civil service administration the position cannot be filled through open competitive examination;

(2) The person to be appointed meets all applicable qualification requirements for the position; and

(3) The appointment is specifically authorized by the Office or is made under an agreement between the agency and the Office providing for such appointments.

(b) A person appointed under paragraph (a) of this section does not acquire a competitive status on the basis of that appointment.

(c) When a position filled under paragraph (a) of this section becomes vacant, the agency may fill the vacancy by another appointment under paragraph (a) of this section only if the conditions of paragraph (a)(3) of this section are again met.

[44 FR 55132, Sept. 25, 1979]

Subpart G—Retention of Incumbents of Positions Brought Into the Competitive Service

§ 316.701 Public or private enterprise taken over by Government.

(a) When the Office, or an agency acting under an agreement with the Office, finds that the Federal Government has taken over a public or private

enterprise, or an identifiable unit thereof, and that a position has thereby been brought into the competitive service, the agency may retain the incumbent of the position.

(b)(1) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a continuing one, the agency gives the employee a status quo appointment and shall decide on a timely basis whether it will convert that individual's employment to career or career-conditional under § 315.701 of this chapter.

(2) When an agency decides not to effect conversion under § 315.701 of this chapter, or the employee fails to qualify for conversion, the agency, in its discretion, may retain the employee as a status quo employee.

(c) An agency may retain an employee under paragraph (a) of this section in a position that it determines is noncontinuing under a temporary appointment. That appointment may be made for a period not to exceed 1 year and will be subject to the time limits set out in § 316.402.

[44 FR 55133, Sept. 25, 1979, as amended at 60 FR 39101, Aug. 1, 1995; 63 FR 63784, Nov. 17, 1998]

§ 316.702 Excepted positions brought into the competitive service.

(a) When the Office, or an agency acting under an agreement with the Office, finds that an excepted position has been brought into the competitive service by statute, Executive order, or the revocation of an exception under Civil Service Rule VI (§ 6.6 of this chapter), or is otherwise made subject to competitive examination, the agency may retain the incumbent of the position.

(b)(1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency gives the employee a status quo appointment and may convert that employee's appointment to career or career-conditional under § 315.701 of this chapter.

(2) When the agency decides not to effect conversion under § 315.701 of this

chapter, or the employee fails to qualify for conversion, the agency, in its discretion, may retain the employee as a status quo employee.

(c) An employee who was serving under an excepted appointment limited to 1 year or less may be retained as a temporary employee under paragraph (a) of this section until the scheduled expiration date of the employee's excepted appointment. Extension of the employee's temporary appointment beyond that date will be subject to the provisions of §316.402.

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The term appointment is subject to all conditions and time limits applicable to term appointments. Service under excepted appointment does not count against the maximum time limit for term appointment in the competitive service.

[44 FR 55133, Sept. 25, 1979, as amended at 60 FR 39101, Aug. 1, 1995; 63 FR 63784, Nov. 17, 1998]

§316.703 Effect on tenure of position change of status quo employees.

(a) A status quo employee who is promoted, demoted, or reassigned becomes:

(1) An indefinite employee when the position change occurs while he is not serving overseas; or

(2) An overseas limited employee when the position change occurs while he is serving overseas.

(b) An employee referred to in paragraph (a) of this section who is changed back to his status quo position becomes a status quo employee.

Subpart H [Reserved]

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

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